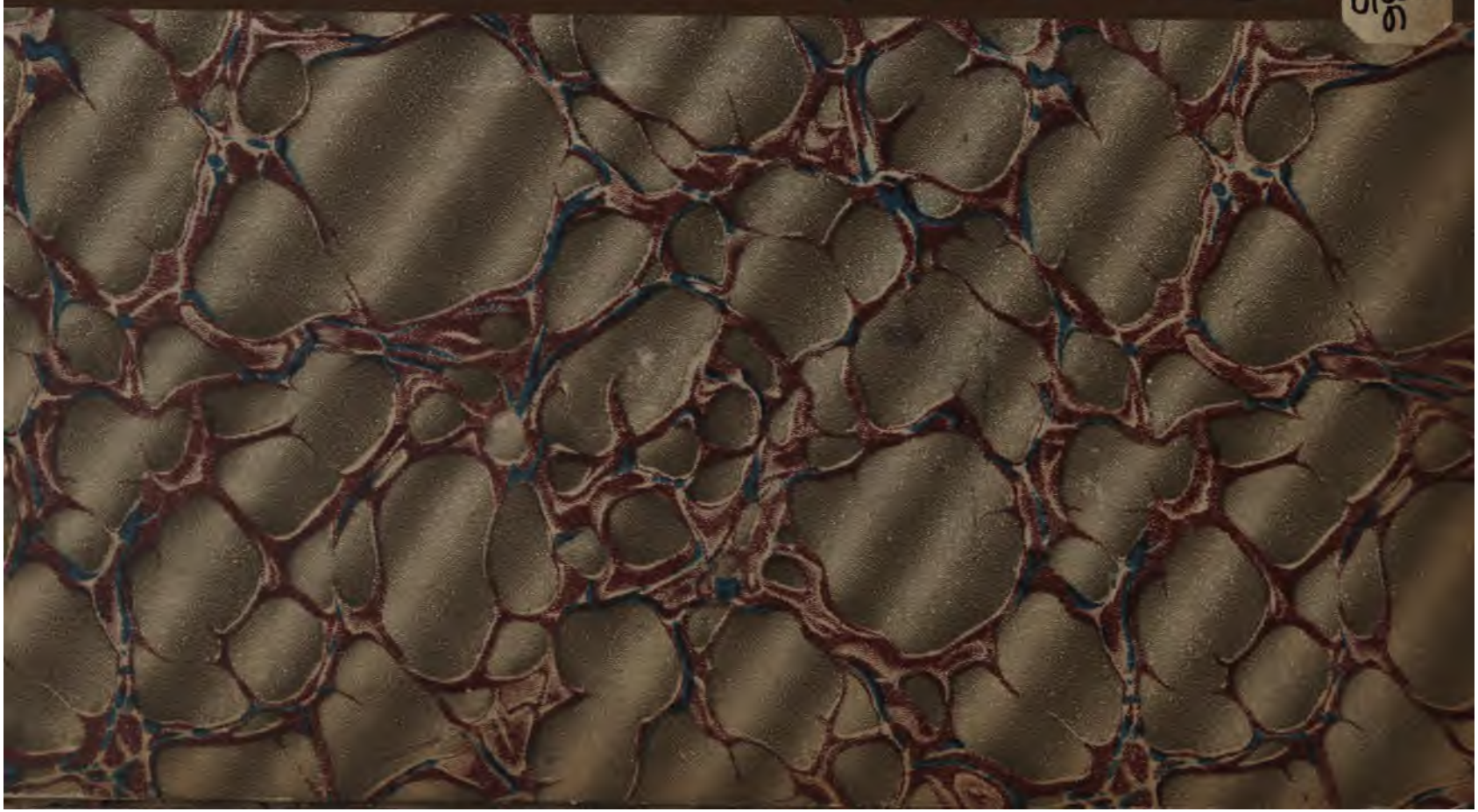

# THE

# PAYNE BRIBERY CASE

AND

# THE UNITED STATES SENATE.

A PAMPHLET,

BY

ALBERT H. WALKER,

A MEMBER OF THE HARTFORD BAR,

AND AUTHOR OF WALKER ON PATENTS.

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"In its conciseness, and yet its thoroughness; in its dissective keenness, and yet adherence to broad general principles; in its boldness in the statement of the inevitable result following the line of unimpeached evidence, Mr. Walker's pamphlet is the most scorching indictment against the validity of Payne's title, and the strongest reply to the apologetic speeches of Logan, Evarts and Teller, that has been formulated, whether in or out of the United States Senate."

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# INTRODUCTION.

IT devolved upon the Sixty-sixth General Assembly of Ohio, to elect, in January, 1884, a United States Senator for the term of six years, beginning March 4, 1885. That election was made January 15, 1884, by a Legislature of 127 members present and voting, of which number 64 were necessary to a choice. Henry B. Payne, the regular democratic candidate, received 78 votes, and was declared elected. Had he received 15 fewer votes, he would not have been elected by that Legislature. The 78 members who voted for him were democrats. On January 8, 1884, the 80 democrats in the Legislature held a caucus to nominate the man for whom all would vote in the General Assembly. In that caucus Henry B. Payne received 46 votes, and all other candidates received 34 votes, and Payne was declared nominated. Had he received six fewer votes, he would not have been nominated by that caucus. Soon after the nomination and election of Mr. Payne, statements were made, by many persons and in many periodicals, that many of the 46 democrats, who voted for him in the caucus, were bribed so to do. The Legislature which elected him was urgently asked to investigate these charges, but it refused to do so. This refusal may have been based on knowledge of individual members that they were innocent, and therefore required no further information on the subject; or it may have been based upon a knowledge that they were guilty, and therefore did not desire any further information on the subject to be conveyed to others. But the Sixty-seventh General Assembly of Ohio was mainly composed of men who were not members of the one which elected Mr. Payne; and not being afraid of any consequent punishment, those members were not afraid to inquire into the

bribery alleged. Accordingly, a committee of its lower house was appointed, and investigated the question to the extent of taking fifty-five depositions in writing. These were transmitted in manuscript, in April, 1886, to the Senate of the United States, for such action as that body might be constitutionally able, and wisely inclined, to pursue; and both houses of the Legislature soon after sent resolutions to the Senate, charging that the election of Mr. Payne was procured by bribery, and requesting it to investigate that charge. The Senate referred the subject and the testimony to its committee on Privileges and Elections, the chairman of which was Senator Hoar, and the other members of which were Senators Frye, Teller, Evarts, Logan, Saulsbury, Vance, Pugh, and Eustis. That committee afterward received, from individual citizens of Ohio, certain affidavits and other statements in writing, to the effect that certain persons, duly identified therein, would testify to certain facts therein delineated, whenever legally called upon to do so. The fifty-five depositions and the supplementary affidavits and statements, were taken into consideration by the committee, with a view to deciding whether the question of bribery ought to be investigated by the Senate. Senators Hoar and Frye joined in reporting in favor of such an investigation; but the other seven members of the committee, reported against inquiring into the facts of the case.

A statement of the principles of law, upon which the integrity of a title to a senatorial seat should be investigated in such cases, may now conveniently be made.

It is plain that no man ought to be permitted to be a member of the United States Senate, who was accessory to the bribing of any legislator to vote for him for that office; and accordingly the Constitution authorizes the Senate, with the concurrence of two-thirds, to expel a member. This power can never be exercised more justly than in expelling a member who has committed the crime of bribery in the endeavor to become such. So also, it is evident that no man ought to be permitted to be

a United States Senator who would not have been elected to that office by unbribed votes, whether or not he was accessory to the bribery which effected his election. Were this rule otherwise, senators would often represent crimes instead of States, and have no better title to their honors and their powers than bribery can confer. Accordingly, the Constitution provides that the Senate shall be the judge of the elections of its own members; and power to judge whether a particular member was legally elected, evidently authorizes the Senate to declare vacant, a seat which has been occupied by a man who was elevated thereto by bribery.

Moreover, it is undeniable that a nomination secured by bribery is every way as objectionable as an election secured by that means, without the intervention of a nomination. Indeed, an election, where it is accomplished by a nomination secured by bribery, is itself thus secured; precisely as the death of a man, where it is accomplished by a bullet projected from a rifle, is really effected by the murderer who fires the gun.

On the other hand, it is evident that no Senator should be unseated, merely because, without his knowledge or connivance, somebody uselessly secured unneeded votes for him, by bribery. If this rule were otherwise, it would be possible for an enemy of a candidate to vitiate his election, when, in the absence of such voluntary criminal interference, that election would have been undoubtedly made and undeniably valid. Furthermore, it is obvious that no senatorial title should be called in question in the Senate, on any unsupported charges of bribery, coming from any source whatever. Not even the Legislature of the State represented by the Senator involved, should be permitted, by its mere resolution, to set on foot a senatorial investigation; because such a power in a Legislature, would unjustly and unwisely impair the independence of Senators. If this were otherwise, Legislatures would be tempted, without cause, to force Senators to defend their titles at the very moments when all their efforts and thoughts are imperatively required in the Senate; and un-

friendly Legislatures could coerce the action of some Senators against the general good.

But where charges are made by respectable persons or assemblies, alleging that a particular senatorial seat was obtained by bribery, or that a particular Senator was accessory to the bribery of a legislator to vote for him, and where such a charge is supported by depositions and other sworn or solemn statements, showing how and by whom the fact of bribery can be proved, it is plainly the duty of the Senate to investigate the matter; and if such a charge is established by legal evidence, as a result of that investigation, it is then the plain duty of the Senate to expel the member if he was accessory to the crime, or to declare the seat vacant, if his title thereto was purchased for him by others without his knowledge.

These introductory statements and considerations will probably not be controverted by many intelligent and upright men. They have not been set down here because they require to be established, but only to remind the reader of the surrounding circumstances, and the relevant law of the case. In the light of those circumstances and that law, he may intelligently consider the following analysis and statement of the depositions which were taken by the investigating committee of the Ohio Legislature, and furnished by it to the Senate of the United States in support of its solemn charge, that the election of Henry B. Payne, as a Senator of the United States, was procured and brought about by bribery.

# STATEMENT OF EVIDENCE.

THE depositions taken by the investigating committee of the lower house of the Ohio Legislature, were printed, by order of the United States Senate, as Senate Miscellaneous Document No. 106, making a closely printed octavo book of 287 pages. What is stated in this account of those depositions, may be verified by the reader, by means of the parenthetical citations, which he will observe in the following pages; and which citations refer to the pages of Senate Document No. 106. What is not stated in this account, is either not contained in that document, or is merely cumulative, or is unimportant to the question of bribery.

## SENATOR PAYNE'S PERSONAL COMPLICITY.

Mr. J. J. Hall, of Akron, Ohio, a lawyer by profession, and a democrat in politics, testified that ex-Lieutenant Governor Mueller of Ohio, who is also an honored democrat, and is at present Consul-general of the United States at Frankfort, Germany, told the witness that the informant, Mueller, was in Columbus at the time of the canvass preliminary to the caucus which nominated Mr. Payne; and that, by accident, he entered the room of Mr. Paige (who is proven, at several places in the evidence, to have been one of the managers of the Payne canvass); and that the room looked like a banking house, there being a large amount of money in plain view; and that he found he was not wanted there; and that he went immediately and told Mr. Payne what he had seen, and told him that they (inferentially Payne's managers), were using money; and that Mr. Payne's answer was, "You don't suppose I would indorse anything of that kind, do you?"; and that Mueller replied, he did

not know as to that; and that nothing further material was said between Mueller and Payne at that interview (p. 49). This deposition was given by Mr. Hall February 3, 1886, and what he said on this subject was incorporated in the report of the majority of the committee which took the depositions; and Senator Payne said, in his place in the Senate, on April 27, 1886, that he had read that report. Though Mr. Mueller was in Germany, there was abundant time, before the matter was debated in the Senate, on July 21, 22, and 23, for Mr. Payne to have secured from Mr. Mueller an affidavit contradicting the testimony of Mr. Hall, if that testimony had been untrue. Mr. Payne had every motive to procure such an affidavit if possible, and Mr. Mueller had ample motives, to make it, if he could do so without perjury. Moreover, Mr. Payne himself knows whether he did have, with Mr. Mueller, the conversation in question; and if he did not have that conversation, he had every motive to deny it, or to authorize some brother Senator to deny it, on the floor of the Senate, during the debates on the question of his title to his seat. But no such denial was made, though Senator Sherman, in his speech, read the testimony of Mr. Hall upon the point, and stated that Mueller was an intimate friend of Senator Payne, and is, moreover, "as honest a man as is."

These facts do not constitute technical legal proof, that Mr. Mueller saw tangible evidences of bribery in Mr. Paige's room, or that the Mueller-Payne conversation actually occurred; but they do convince the reasonable mind, of the truth of both of these propositions, and that Mr. Mueller would testify to both of them if called upon so to do.

The facts thus shown to be known to Mr. Mueller, prove that Mr. Payne was credibly told, during the time of the canvass peliminary to the caucus which nominated him for senator, that his manager, Paige, was using money to produce that result. The fact that Mr. Payne inquired whether he, Mr. Mueller, supposed he would indorse such use of money, implies that

Mr. Payne understood the use mentioned to be illegal use; for if it were legal, there would be no impropriety in indorsing it. Thus notified that bribery was being practiced in his behalf, Mr. Payne, if really adverse to that practice, would have said to Mr. Mueller, "I think you are mistaken," or "I will have that stopped," according as he did or did not believe Mr. Mueller to be in error relevant to the significance which he ascribed to what he had seen. But the answer Mr. Payne did give, implied no reluctance to have bribing done for him, provided he was not called upon to actively participate therein. It implied a claim that he would not help bribery forward; but it implied no willingness to do anything to hinder its work. And when Mueller declined to say that he thought Payne would not indorse it, Payne allowed the topic to drop without any asseveration of innocence. What do we say of a man who stands inactive when he is credibly informed that another is committing bribery in his behalf? We say, and say justly, that such a man is properly chargeable with complicity in that crime.

From this painful picture of general bribery, and of the probable complicity of Senator Payne therein, it is now in order to turn to the following:

SPECIFIC CASES OF BRIBERY.

THE CASE OF O. B. RAMEY.—This man was a Senator in the Sixty-sixth General Assembly of Ohio. His residence was Ottawa, a country town about fifty miles from Toledo; and his occupation was that of country merchant. He did business under pretence of a partnership, but he admitted, on cross examination, that he had no partner in business (p. 270).

Representative Kahle testified (p. 68), that, Senator Ramey, before the caucus, offered him $5,000 to vote for Payne, and told him that he himself had been offered the same amount to do the same thing, and intimated to him that he intended to take it. Ramey testified (p. 206), that he did vote for Payne, but that Kahle's statements about bribery were entirely untrue.

This latter testimony was to be expected from Ramey if he was innocent, and was little less to be expected if he was guilty. But Ramey admitted (p. 271), that in the Spring after the election, he handed his wife $4,500 in money, and that his wife kept it in her trunk more than two months, and then gave $2,000 of it back to him, and took the other $2,500 to Toledo, and deposited it in a bank there, in her own name, receiving certificates of deposit for the amount; and that he himself afterwards drew out the money on those certificates, which had meanwhile been assigned to him. It appears also, from Ramey's testimony, that though there were two very solvent banks in Ottawa, in one or both of which he kept regular deposits, he never deposited any portion of this $4,500 in any bank in that place. Ramey pretended that he received that money from the sale of real estate in West Virginia; and his circumstances seem to have been such that his mere possession of $4,500 in money, would not afford any corroboration of Kahle's testimony; but the extraordinary way in which that money was kept, shows that he intended its possession to be a secret, known only to himself and his wife. In order to make that secrecy consistent with innocence, it was necessary to show some special innocent reason therefor; but Ramey did not even pretend to do that. Kahle's testimony was not given to clear him from any charge of bribery, for no such charge appears to have been made against him, and no adequate motive for him to commit perjury is suggested by anything in any of the depositions. His testimony is therefore entitled to full credence, and being corroborated by the secret possession by Ramey of $4,500, establishes Ramey's guilt by strong legal evidence.

THE CASE OF ELMER WHITE.—This man was also a Senator. His residence was Defiance and his occupation that of part proprietor and chief editor of a country newspaper, and co-owner and manager of an auxiliary job printing office. Until a short time before the caucus, Mr. Pendleton depended on Mr. White to be his leading supporter and manager in the

preparatory canvass (p. 126); but Mr. White voted for Payne (p. 255). The case against Mr. White rests in the testimony, upon the apparent suddenness of his conversion from Pendleton to Payne, and upon a sudden increase in his pecuniary resources. The evidence about this last point is substantially as follows:

Just prior to the caucus Mr. White had no property except a half interest in the Defiance newspaper and job printing office; and that office and its appurtenances were mortgaged for a considerable part of their value, as they had been at all times since their purchase by the partners of which Mr. White was one. (See depositions pp. 221, 227, 230, 240, 244, and 254.) Not long after the caucus, according to White's own testimony, all that part of the mortgage debt, on which he was personally liable, was paid; but he claimed with probable truth, that the money with which it was paid came from the recent earnings of the business. So also, during the next few months, the firm paid $3,000 toward the purchase of the good will and other property of a rival newspaper which they bought up to discontinue, and thus get out of the way (p. 233, 257). A fair examination of all the testimony will show that the earnings of the business over the expenses thereof, and above the individual and family expenses of the owners, could not have exceeded what was paid out on account of the chattel mortgages on the old property, and the purchase of the rival concern. Indeed it is impossible to calculate how those results could have been accomplished out of the income of the business, and the tone of the testimony indicates that the neighbors of Mr. White do not generally believe that they were achieved in that way. Certainly nothing more than to have done thus much, can possibly be claimed for the newspaper business of one year in that country town. (See deposition of Rowland, a country journalist, beginning on p. 240.)

But in addition to paying out large sums in his business, during the next few months after the caucus, Mr. White suddenly improved his way of living. Theretofore he had lived in a rented

house with his wife (p. 227), and his aged father and mother had lived with him (p. 230). The father had lately owned no real estate, except two acres near Tiffin, which he still held, unencumbered, at the time of testifying; and he had sold no real estate, and no personal estate of any importance in recent times (p. 247). Indeed, he appears to have been an old man without any business or employment, and spending his last years in the family of his son. But soon after the caucus, the father purchased a house and lot in Defiance for $4,200; paying $2,000 in cash, and promising to pay $2,200 more on or before one year from the time of purchase, with interest at 6 per cent. per annum. He actually paid $1,700 toward the $2,200, within two months after the purchase, and paid the other $500 when it became due (p. 245). Thereupon Senator White rebuilt the house at an expense of $1,800 and paid the contractor himself (pp. 233, 259). Here then are $6,000 that got somehow into the possession of the two Whites, within a year after the Payne caucus. If they could give a verifiable account of the source or sources from which it came, they could answer the charges of bribery against Senator White, which, it appears from the testimony, have been widely circulated and believed in Ohio ever since the election. But merely to deny that the money was received in bribery, would amount to no more than a plea of not guilty; and to accompany that denial with a refusal to say where the money did come from, would be equivalent to admitting that its origin would not bear the light. Both of the Whites testified in behalf of the ex-Senator, and both refused or failed to give any account of the sources of the money now in question. The father positively and repeatedly refused to say where he got the $4,200 which he paid for the house and lot, or how long he had possession of it before paying it out (p. 247); and the son said (p. 260), that he did not know where his father got the $4,200, and had never had any conversation with him about it. Now this statement is inconsistent with any theory of innocence. It is

incredible that the father should have received $4,200 and used it in buying a house and lot to be improved by the son at a further expense of $1,800, and the son never know or ask where the money came from, unless the son believed that the truth would not bear inquiry. The refusal of the Whites to account for that $4,200, when the son was being investigated for bribery on the theory that he somehow furnished the money, is nearly equivalent to an admission of guilt in him.

When ex-Senator White was asked from what source he derived the $1,800, which he paid out for rebuilding the house, (p. 260) he replied in the following words: "From what source? From my business." The next question was, "Out of the printing business?" and the answer was, "Out of the printing business." Now this answer is incredible in view of the fact that the money paid out on chattel mortgages on the printing office, and in purchase of the rival concern, certainly exhausted the net earnings of the printing business for the year following the caucus. Moreover, the manner of the answer is pregnant with meaning to an experienced cross-examiner. The first question was perfectly plain, but the first words that came to the lips of White in answer, were not words of reply, but words of parrot-like repetition of the first words of the question. This is a plain indication of mental hesitancy, such as is very apt to occur during the instant in which the will of a witness is forcing his lips to utter perjury. A similar almost involuntary repetition of the question, constituted the reply to the next interrogatory, and still further indicated the mental state of the witness at that moment of time. Throughout most of his deposition, Senator White probably told the truth, and those answers are all plain, cogent, and unhesitating. The contrast, in point of manner, between his replies relevant to the $4,200 and the $1,800, on the one hand, and the bulk of his deposition on the other, is as instructive to a lawyer as it is painful to a moralist. That those sums were honestly obtained, is incredible in view of all the testimony, and that they were paid to

White for voting for Senator Payne, is an hypothesis that a thorough investigation would probably prove by technical legal evidence.

THE CASE OF W. W. FIERCE.—This man was a representative, and by occupation was a country doctor and farmer, living in Vinton County. Fierce was pledged to vote for Pendleton (p. 122), and warmly advocated his election, (pp. 29, 83) but he voted for Payne in the caucus (p. 165).

Mr. O. T. Gunning, a lawyer of Columbus, testified (p. 27), that he had aided Fierce in his canvass for the legislature, and until the Friday before the caucus had been assured by him that Fierce would vote for Pendleton. On that Friday Fierce astonished Gunning by announcing his intention to vote for Payne. Gunning immediately charged him with having been bribed to do so. Fierce did not deny the charge when Gunning made it to his face, but instead of that, "he became exceedingly sick, white as a sheet, and answered not;" and had to be sent away, and laid two days in bed (p. 32). Fierce denied, in his testimony, that Gunning denounced him as a liar and scoundrel; but he was not inquired of whether Gunning charged him with bribery, and he did not give any testimony on that point, and does not appear to have known, when he was on the stand, that Gunning had made such a statement. Had he known that fact, he would probably have contradicted that statement, even if it were true, for a man who has impliedly confessed a crime, has a powerful motive when on trial, to deny that confession.

The case against Fierce is also supported by the fact that soon after the caucus he paid out considerable money, and when testifying as to the sources from which he obtained that money, he gave a false account as to part of it, and no account whatever as to the residue. The following is what the testimony shows about these transactions.

H. C. Soule testified (p. 107, 108), that Fierce sent two drafts from Columbus, to one Bishop, his father-in-law, in the

spring of 1884; one of the drafts being used by Bishop in paying one of three notes for $387,50 each, and interest thereon, and the other draft being used in paying a note of $100 and interest thereon. Fierce admitted these facts in his testimony, and admitted that the aggregate thus paid out amounted to $540,80 (p. 171). When asked where that money came from he said that it came from the sale of some Kansas lands (p. 172). But further questions showed that the only money he ever received from the sale of Kansas lands was $400 received from the sale of some land of his wife, and paid out in 1883, and $600 received and paid out in 1885. This was made so plain to Fierce, that he admitted, further along in his deposition, that the $540,80 in question did not come from Kansas lands, and denied that he sent any money from Columbus in payment thereof (p. 176). This denial flatly contradicted his own previous statement, and flatly contradicted the testimony of Soule who had knowledge of those drafts at the time they were paid out by Bishop.

In May, 1884, Fierce sent a draft for $250 to Senator Pendleton to repay campaign money advanced by the latter to Fierce in 1883. When inquired of by the committee where that money came from, Fierce said, "I can't tell anything about that." (p. 169.)

During the 1884 session of the legislature he had his family living with him in Columbus, and he testified that he did not know whether or not his living expenses exceeded his salary. (p. 174.) His nearest neighbor testified that Fierce abandoned the practice of medicine altogether, before he went to the legislature, and that the farm on which he lived was not very productive (p. 109). Indeed, the testimony of Fierce himself substantially agrees with that of his neighbors in showing that when he entered the legislature he was a poor man, without any known income other than his salary as a legislator and the scanty productions of a small farm. His legislative salary and mileage amounted to only $1,248 for two years, and his sales of wheat

and hay, which were apparently his only cash crops, amounted to less than $400 in four years according to his own account (p. 182).

Bribery can seldom be more thoroughly established than it is established by the testimony in the case of Fierce. His sudden conversion from Pendleton to Payne: his tacit confession of bribery to Gunning: his unwonted possession of nearly $800 soon after the caucus: the false account which he swore to, of the source of $540.80 of that money: the total failure to give any other account of that source, or any account of the source of the other $250: these facts scarcely stop short of legal proof that W. W. Fierce was bribed to vote for Henry B. Payne for Senator.

THE CASE OF L. A. BRUNER.—This man was a representative from Wyandot County, but afterward he removed to Tiffin, in Seneca County. When in the legislature, he was editor of a country newspaper in Upper Sandusky. After the legislature was elected, and before it assembled, he was very bitterly opposed to Payne, and wrote to an advocate of Pendleton, inquiring whether he was going to submit to have Pendleton defeated by corrupt means, and told the same witness that he himself preferred Mr. Converse for senator, but that, "if there was no show for Converse he would vote for Pendleton" (p. 73, 74, and 75). But before the legislature met, Bruner received a letter inviting him to visit Oliver Payne, the son of Henry B. Payne, at Cleveland. Oliver Payne asked him who he was going to support for Senator. Bruner told him he was a Converse man. Payne asked him to support his father, in the event Converse was not a candidate. Bruner told him that perhaps he could do so, as he was not pledged to a second choice. Payne thereupon gave him a check for $150 with the request that he go to Washington and see Mr. Converse; remarking at the same time, that Converse would withdraw or had withdrawn from the race. Bruner took the check, went to Washington, and saw Converse who corroborated Payne's statement. Thereupon Bruner in-

formed Payne that he would support his father. And Bruner did vote for Payne, according to his promise to do so. This account of the Payne interview, and its result, was given by Bruner himself to Hon. W. L. Matthews, a fellow member of the legislature, and repeated by Mr. Matthews in his testimony (p. 66). These facts establish an undeniable case of bribery. The $150 was ostensibly given to pay Bruner's expenses to Washington, to secure from Converse a corroboration of Payne's statement that Converse would not be a candidate for Senator. But that was a mere pretence, because that corroboration could have been got by letter for ten cents, and by telegraph for a dollar, and because the journey from Cleveland to Washington and back could readily be made for a small fraction of the $150. The money was paid by Payne after Bruner told him that in the event of Converse not being a candidate, Bruner could vote for Payne, and before he told him that he would so vote, in that contingency. It is evident that Payne gave the money to induce Bruner to do what he could do, but had not yet said he would do; and it is equally plain that Bruner took the money because he wanted it, and not because there was any real occasion for a journey to Washington, or any necessity for expending $150 on a journey thither. That money was evidently given to influence that vote, and was plainly so understood by both parties at the time. And such giving and taking is bribery in Ohio as well as elsewhere, and is none the less so, because the amount was not larger.

But it is apparent, in the testimony, that Bruner afterward received several thousands of dollars from or through one or the other of the Paynes, which he would not have received had he not voted for Payne. This sum appears to have been $3,500, and to have been described by Bruner to the witness Boyle, as a loan made by Oliver Payne in gratitude for the election of his father (p. 57). Bruner did not himself testify before the committee, and the depositions furnished no positive proof that the "loan" was never repaid; but a thorough investigation of the

true character of that advance of $3,500 is evidently necessary to clear it from the suspicion of having been additional bribe money, paid to Bruner in consideration of his vote for Senator Payne.

THE CASE OF C. S. WELSH.—This man was a Senator, and a resident of Athens in the southeast part of the State. He was pledged to vote for Pendleton (p. 120), but after his election and before the meeting of the Legislature, he was somewhat secretly visited by Robert E. Reese (p. 120), a man who was proved to have been employed to travel extensively through the State in the interest of the Payne canvass (p. 94), and still later was visited by D. R. Paige, one of the main managers of that canvass (p. 120). On his arrival at Columbus, Welsh was at once taken to an already engaged room, by a Payne agent, and kept so closely till after the caucus, that no friend of Pendleton was permitted to speak with him (p. 121). One witness who was his intimate friend and warm supporter, saw Welsh and tried to meet him, but never could get a chance (p. 121). The witness, S. K. Donavin, in his celebrated open letter of January 13, 1886, to Senator Payne, stated that Welsh was bribed to vote for Payne for Senator. When testifying as a witness, Donavin was asked to give his authority for that charge. He at once named Dan. Grosvenor, and testified that Grosvenor told him that he had personal knowledge of the fact, and knew others who could corroborate his statement (p. 82). Strangely enough, Grosvenor does not appear to have been asked to testify, and neither he nor Welsh did so, though neither of the fifty-five depositions contains anything inconsistent with the truth of what Grosvenor told Donavin.

THE CASE OF WILLIAM BOYD.—This man was a representative from Butler County, a county near Cincinnati. Donavin testified that Michael Harriman, of Toledo, had said, that he could prove Boyd to have "sold out" (p. 83). It elsewhere is shown in the testimony that Michael Harriman was the private secretary of the Hon. Frank Hurd, but neither he nor Boyd

testified in the investigation, and nobody said anything to relieve Boyd from Donavin's charge.

OTHER SUSPICIOUS CASES.—Many of the fifty-five depositions contain matter casting suspicion upon thirteen other members of the Legislature which elected Senator Payne; but the clues in those cases were not adequately followed up by the legislative committee which took those depositions. A thorough investigation of those cases, would probably prove nearly all of the thirteen to have been bribed to vote for Senator Payne.

## THE SUPPLEMENTARY AFFIDAVITS AND STATEMENTS IN WRITING.

The Senate Committee on Privileges and elections received information of the names of witnesses who would swear to confessions or other evidence of bribery, in several of cases about which the investigations of the Ohio committee stopped short of legal proof, or to which that investigation did not extend. Of this new matter, the following statements by H. E. McClure, and Joseph B. Hughes are leading examples.

H. E. McClure, of Ottawa, and a reputable citizen will testify, if brought before your committee, that the member of the house from Crawford County at the time of Payne's election to the United States Senate, stated to him at various times and places, that he had received money for his vote in caucus for Mr. Payne; that while he came to Columbus a Pendleton man and knew that his constituents were largely in favor of Pendleton's re-election, that he became convinced that Payne would carry the Democratic caucus anyhow, and that money could be had for his vote for Payne and that he concluded to and did take it.

This statement will be substantially the same as to conversations with and admissions made by Cuff, the then and now representative from Henry County.—[*Congressional Record, July* 23, 1886, *p.* 7780.

Senators Teller and Logan endeavored to break the force of this offer of proof, by the following interruption of Senator Hoar, in whose speech it was set forth:

Mr. LOGAN. Is that in reference to Zeigler?

Mr. HOAR. It is in reference to Zeigler.

Mr. LOGAN. You know that Zeigler is one of the men whom Mr. Cowgill himself exonerated.

Mr. HOAR. This is new evidence.

Mr. TELLER. It is proved that Zeigler did not vote for Payne.

Mr. LOGAN. Zeigler did not vote for Payne. That is the evidence here, and you know it.

Mr. HOAR. What does the Senator mean by interrupting me to say "you know it?"

Mr. LOGAN. I mean that you know what the evidence is here.

Mr. HOAR. I did not recall that particular fact, but it makes no difference; the question is, Is this case to be ever tried? That is the point.

Mr. LOGAN. The Senator need not get excited about it; but I will state what I meant. It was this: If Mr. Zeigler was one of the parties who was tried before the Legislature and the evidence showed he did not vote for Mr. Payne, and he was entirely exonerated by the Legislature, I ask what effect it could have to prove anything when he did not vote for him?

Mr. HOAR. The vote in that caucus, and it is a pretty significant suggestion, was by secret ballot. The Payne men against the earnest remonstrances of the members of the other party insisted on having the vote by secret ballot.

Senator Hoar was not able, at the moment, to contradict the two Senators, but the present writer has read the whole of the evidence and knows that they were in error. What it contains on the subject is that Zeigler claimed to have voted for Ward, after having been told by his partner in business, that if the contrary became known, he would be "rail-ridden out of the town" in which he resided (p. 199).

Joseph B. Hughes, the present Consul of the United States in Birmingham, England, has stated, on many occasions, to many persons that Senator Elliott admitted to him that he received $2,500 for voting for Payne.—[*Congressional Record of July* 23, 1886, *p.* 7779.

Elliott testified before the Ohio Committee, that he voted for Ward, and that he so announced at the moment he deposited his ballot, but that announcement may have been made merely to divert suspicion; and though he says he held up the ballot in his hand when making the statement, it does not appear and is not probable that any one else did or could see what name was written upon or within it (p. 149). Moreover, the son of Senator Elliott, who is shown to have lived with his father on the farm of the family, the title to which was in the name of the mother, and who was examined by the legislative committee relevant to money deposited in bank by him about the time of the caucus, gave a long series of evasive answers, which convince the reader of his determination to conceal the facts (p. 196).

The foregoing pages of this pamphlet set forth the real case which was before the United States Senate in July, 1886, relevant to the title of Senator Payne to a seat in that body. On that case the Senate, by a vote of 44 nays to 17 ayes, refused to order any investigation.

# THE ACTION OF THE SENATE.

THE intelligent and patriotic citizens of the United States, take a deep interest in the character and conduct of the members of the United States Senate, and are therefore everywhere inquiring of themselves, and of each other, what light is shed upon that character, by their conduct in the Payne case. No question is more proper or patriotic than this, and to aid in deciding upon a true answer, is evidently the privilege of all and the duty of some. The writer of this pamphlet has therefore determined, at whatever personal or professional disadvantage, to do what lies before him toward illuminating the subject.

The forty-four Senators who voted against any investigation, were twenty-nine democrats and fifteen republicans; while all of those were republicans, who voted for inquiring into the charged and specified briberies, by means of which the election of Senator Payne was alleged to have been procured. Of the twenty-nine democrats, four were members of the Committee on Privileges and Elections, and joined in signing a document setting forth what they claimed were the reasons which induced them to report against any investigation. That document is printed as the first part of Senate Report No. 1490, and sums itself up in the assertion that there is nothing to indicate that Henry B. Payne had any knowledge of anything wrong in his election; and that the testimony taken in Ohio was insufficient to show that his election was procured by bribery. The first of these assertions was made in the face of Mr. Hall's testimony that ex-Lieutenant Governor Mueller told him, that he himself told Payne that Payne's managers were using money; and in face of the fact that neither Mueller nor Payne ever denied or

questioned the truth of that narrative. The other point of the document must confront the fact that to procure six votes in the caucus by bribery, was to procure the nomination, and that to procure the nomination was to procure the election of Mr. Payne; and the fact that the depositions taken by the Ohio committee, while not technically proving the bribing of so many legislators, did undeniably indicate the bribing of more than that number. The conclusion of the four democratic committee-men must have sprung from a persuasion that an investigation would acquit the accused, and therefore prove useless to the United States, or from a fear that it would establish the charges, and therefore prove destructive to Mr. Payne's title to a seat in the Senate. But the four committee-men had no data for any such persuasion, and even if such data had existed, their desire to vindicate Senator Payne, and establish, beyond all question, the innocence of his democratic supporters in Ohio, would probably have outweighed their desire to save those monies of the United States, the expenditure of which would have been involved in a senatorial investigation. Senators Pugh and Eustis, two of the four democratic committee-men, made speeches in the case, on the floor of the Senate, but neither of them quoted or stated any part of the testimony, or said anything tending to establish the innocence of the accused, or to free the suspected persons from imputation of crime. Their arguments were mainly *ad hominem*, and, as far as they were valid for any purpose, were confined to expositions of the action of legislators and Senators in conducting such preliminary inquiries as had taken place relevant to the matter in hand.

In refreshing contrast with the irrelevant speeches of the two democratic committee-men, was the frank and animated discourse of the only other democratic Senator who addressed the Senate on the Payne case. This was Senator Call, of Florida, who boldly announced it to be his opinion that the United States Senate has no constitutional concern with the question whether any or all of the members of the Legislature which

elected a particular Senator, were bribed so to do, and no constitutional concern with any crime that a Senator may have committed before becoming such. His statement touching the election of Senators, was to the effect that when made by the existing Legislature, and in the form, and at the time and place prescribed by law, such an election is not subject to review anywhere, on any proof that it was procured by bribery; and his statement touching the qualifications of Senators, was to the effect that they include nothing but thirty years of age, and nine years of citizenship.

None of the twenty-four other democratic Senators gave any reasons for their votes against investigation, and it is therefore impossible to know how many of them would claim to agree with the four committee-men, and how many of them would claim to agree with Senator Call.

But the real reasons which caused the twenty-nine democratic Senators to vote as they did, must have been more weighty than any of those upon which they professed to proceed. While the average ability of the democratic side is not so high now as it was a few years since, it is undeniable that the twenty-nine democrats in question are men of considerable intelligence. They are far too strong in point of intellect, to be themselves imposed upon by those allegations and arguments which five of them endeavored to palm off upon the people. But their real reasons, though undisclosed by them, are not undiscoverable by us.

The Senate consists, at present of forty-one republicans and thirty-five democrats; but after the newly elected republican Senator from California shall have taken his seat, in December, the Senate will have forty-two republicans and thirty-four democrats. If the latter can gain five Senators in the next Senate, they will then have a majority of that body, and be able to control the Senate committees and officers. Having at the same time, as the democratic party probably will, a majority of the lower House of Congress, and having, as that party cer-

tainly will, one of its members in the presidency, there will be nothing to hinder a renewed and successful attempt to repeal the Federal election laws, and other conservative statutes of the United States, the repeal of which in 1879, was prevented by nothing but the persistent vetoes of President Hayes. With those laws repealed, fraud will range and revel nearly unhindered in the great democratic cities, and with the aid of the solid South, will enable the democratic party to elect, in 1888, perhaps its most unworthy public man to be president, even against any of the most worthy men in the republican party. Such sure control of the presidential election of 1888, and of succeeding presidential years, is an object very dear to the average democratic senatorial heart. In order to secure that object, it is highly important, or absolutely necessary, to secure control of the United States Senate, during the last half of the present administration. If Senator Payne can keep the seat he occupies, it may be possible to secure that control, by electing next Winter, democratic Senators from New York, New Jersey, Connecticut and Indiana, to succeed Senators Miller, Sewell, Hawley, and Harrison, because the democrats in Virginia have already elected one of their number to succeed Senator Mahone. But if Senator Payne is unseated within the next year, he will be succeeded by a republican; for the present Governor and the present Legislature of Ohio belong to that party. In that event, the democrats, in order to secure control of the Senate in 1887, would have to elect in 1886, a majority of the Legislature of some other Northern State, in addition to those of New York, New Jersey, Connecticut and Indiana. This is apparently impossible, and it follows that the control of the United States Senate cannot be secured by the democrats in time to repeal the Federal election laws, for the purposes of the party in 1888, unless Senator Payne can be kept in the seat he now occupies.

But the evidence presented to the Senate showed that a thorough investigation of the alleged briberies upon which his

title to that seat was erected would be very dangerous to that title. Therefore, the twenty-nine democratic Senators, who voted against any investigation, had a powerful party reason for so doing: a reason they dared not avow, and dared not disregard. And there is no reason to believe that any of the six democrats who were absent, or for some other reason did not vote upon the question, would have been more brave upon either of these points. There may be citizens who, after learning the foregoing facts, will still fondly believe that the real reasons which influenced the twenty-nine democratic votes, were the reasons avowed by the four committee-men, or those avowed by Senator Call. But among such citizens, very few men will be found who have any knowledge of practical party politics, or any power to weigh the real and the ostensible motives of party politicians.

But the fifteen republicans Senator who voted against any investigation, must be accounted for on some other line of reasoning than that which we have found to account for the votes of the twenty-nine democrats. The motives which influenced them, must have been characterized by very great strength, whatever other quality they lacked or possessed; because party policy and party opinion united with honor, and with patriotism, in the vain endeavor to withstand those motives.

Only three of the fifteen took any part in the Senate debate upon the question; and those were the three republican committee-men, who joined in the second of the three documents, which were submitted to the Senate, from its Committee on Privileges and Elections, in support of the views which the three divisions of that committee, respectively expressed of the case. The three Senators now referred to are Senators Logan, Teller, and Evarts, and the document in which they joined is printed on pages 9 to 15 inclusive of Senate Report No. 1490. The substance of that paper is contained in its two following statements, viz.: "We do not understand that the house of repre-

sentatives of Ohio presents any case upon the testimony taken or imagined to be accessible to any investigation by the Senate, or upon any allegation of the existence of facts suspected, though not probable, as would affect Mr. Payne with such personal delinquency or turpitude as would invite or tolerate his expulsion from the Senate for his participation in the transaction which resulted in his election. * * * * * * * * * Nor, in our opinion, is there any allegation that proof exists or would be forthcoming to the extent that would vitiate the election of Mr. Payne by reason of the necessary votes, in caucus or in the legislature, for his election, having been obtained by fraud, corruption, or bribery."

The first of these statements substantially asserts that the Mueller–Payne conversation affords no ground for suspecting any sort of guilty conduct or delinquency in Senator Payne relevant to his election. This is a surprising assertion to come from three lawyers, at least one of whom has had a full practice at the bar, and neither of whom would have failed to recommend a thorough investigation of such an incident, if it had been relevant to an alleged title set up against a private client of his. Senator Evarts did not acquire his great fame at the bar by resolutely ignoring such clear indications of faults in his opponents; and Senators Logan and Teller did not achieve their successes in politics, by shutting their eyes to any such disclosures of the performances of their adversaries.

The second statement was made in face of the evidence heretofore summarized in this pamphlet, and in face of the fact that Messrs. Little and Butterfield, members of Congress from Ohio, had offered, "on their personal responsibility, to establish, to the satisfaction of the Senate, largely by witnesses who were not within the reach of the Ohio committee, and partly by evidence which strengthens, supplements, and confirms that which was before that committee, that there is specific proof leading with great force to the conclusion that each of ten members will be shown to have changed their votes corruptly,

and thereby that the result was changed." (See Senate Report No. 1490, pp. 35, 36.)

The real reasons which caused Senators Logan, Evarts, and Teller to vote against any investigation of the Payne case, are evidently not disclosed in their joint report; because the reasons stated in that document are found to be fictitious when compared with the facts and allegations which were before the committee. Our next recourse may therefore be to the speeches of the three Senators, for we may properly search through their own declarations, before we seek for evidence of their motives in other though perhaps more reliable quarters.

The speech of Senator Logan, preceded the other two in point of time, and far outran the longest of them in point of length. It occupies ten pages in the Congressional Record, and in its pamphlet form, it makes thirty-two octavo pages of small and solid type. Much of the matter it contains, is quite wanting in relevancy to the Payne case. Among such things is a letter written by a young editor of a newspaper in 1863, and a series of sour and unhappy comments upon the man who wrote it. Among such things, also, are many self-satisfied statements about the past life and future prospects of the Senator speaking: statements so numerous that the personal pronoun in the first person singular occurs several hundreds of times in the speech.

But the Senator made some attempt to support his vote by reasoning. To this end he ostensibly analyzed the evidence in the case, and seemed to assume that he was showing it to be ineffective. In this way, he discussed the Mueller-Payne conversation, but instead of reading the evidence on the subject, he misstated what Mueller said to Payne, and misquoted what Payne said to Mueller. Thus he conveyed to the hearers and the readers of his speech, a misleading account of that interview, and gave to the conversation a comparatively innocent air. In this way also, Senator Logan discussed the Elliot case, and the case against Mooney and Roche, and some other cases, wherein the evidence procured by the Ohio committee was comparatively

weak. But he did not mention the evidence against Ramey, nor that against White, Fierce, Bruner, Welsh, or Boyd. Instead of doing so, he reviewed certain hearsay testimony that had no relevancy to any bribery in particular, and followed it by saying: "I could go on from now until night quoting this testimony. It is all of the same character." In taking the testimony of so many persons as appeared before the Ohio committee, it is always found that much of the matter sworn to is lacking in probative power. In reviewing such a record of depositions, the judicial mind seeks out and weighs the important parts, leaving the residue to fall into a merited oblivion. But the method of Senator Logan, in the Payne case, was to search for the comparatively weak parts of the depositions, and to make those portions appear even more uninstructive than they really are, and to state that the entire record is of the same character. Such a plan as that, would not be used by a lawyer defending a criminal in court, because, in such a tribunal, the prosecuting attorney would expose the attempted deception; but in a speech which was made to be printed and circulated, rather than analyzed and answered, such a plan could be adopted with comparative safety.

Senator Teller was the next of the three committee-men to attempt to support their action by argument. Instead of fairly stating and discussing the Mueller-Payne conversation, or Lieutenant Governor Mueller's statement that Paige's room "looked to him like a banking house" (Senate Document 106, p. 49), Senator Teller, mentioned the testimony of Boyle and that of Russell, and said "That is all the testimony there is upon which the minority can base their charge that respectable Democrats of Ohio are back of the charge as to the vast sums of money in Paige's room." (Congressional Record of July 23, 1886, p. 7768.) Boyle and Russell did refer to other and weaker indications of the presence of large sums of money in Paige's room, than those which are derivable from Lieutenant Governor Mueller's statement of what he saw in that room; but

neither Boyle nor Russell referred to Mueller's statement or experience at all. This misrepresentation of the record might be charged to inadvertence rather than to intention to deceive, were it not true that Senator Teller claims to have carefully read and reread the depositions, and to have "perfect knowledge" thereof. (Congressional Record of July 22, 1886, p. 7734.) But the visit of ex-Lieutenant Governor Mueller to Paige's room, is one of the salient points of the case, and could not have been forgotten by Senator Teller. Therefore it is the necessary inference, that he wilfully intended to conceal that damaging matter, when he expressly denied the existence of any such testimony.

Senator Teller discussed the case of Ramey, but he ignored the secret keeping of the $4,500 for over two months in Mrs. Ramey's trunk, and he strangely held that Ramey's contradiction of Kahle's testimony, that Ramey had confessed the bribery to him, was enough to overthow that testimony. According to Senator Teller, a bribe-taker may secure a vindication and an acquittal, by simply denying his guilt, even against the evidence of an innocent person to whom he had confessed that guilt, and in spite of his suspiciously secret possession of $4,500 in money.

The case of Dr. Fierce was also mentioned by Senator Teller in his speech, but the Senator ignored Fierce's tacit confession to Gunning, and stated that Fierce proved that certain monies inquired of, were the proceeds of Kansas lands; whereas Fierce's own deposition disproves Fierce's assertion that the monies in question came from that source.

The case of Mr. White was also treated by Senator Teller, but he entirely ignored the $1,800 which White paid out for improving the house purchased by White's father; and he stated the amount paid for that house to have been $2,000, whereas the record shows that it was $4,200; and he stated that, "It was shown that the elder White was a man who did occasionally have some money of his own" (Congressional Record of

July 23, 1886, p. 7769), whereas, the record contains no evidence whatever to any such effect.

The case of Mr. Bruner was also spoken of by Senator Teller in his speech, but he ignored the undoubted payment of $150 to him by Oliver Payne, and he appeared to claim to see nothing suspicious in the alleged "loan" of $3,500 from one or the other of the Paynes to the same man.

The case of Mr. Welsh was also referred to by Senator Teller, but he did not mention Welsh's suspicious interview with Reese or his suspicious avoidance of his intimate Pendletonian friend, or Donavin's uncontradicted statement that Dan Grosvenor had personal knowledge of the Welsh bribery.

The case of Mr. Boyd was not mentioned by Senator Teller at all, presumably because that case occupies but a small space in the depositions, and affords no handle whatever to the arts of one willing to appear to state a case, while suppressing or mistaking all of its salient points.

The case of Mr. Elliott was treated by Senator Teller on the assumption that every man present at the caucus could have read Elliott's ballot, when he held it an instant in the air before depositing it in the ballot-box, and therefore could verify Elliott's claim that it was a ballot for General Ward. This assumption was held by Senator Teller to be enough to overthrow the statement of United States consul to Birmingham, that Elliott confessed his bribery to him.

Senator Teller also commented upon the cases of Mooney and Roche; and as the testimony against those men happened to be weak, his comments did not require to be misleading. But he stated that Mooney's room-mate made an affidavit to show that at the time of the caucus, Mr. Mooney was occupying rooms in a different part of the city from those in which it was claimed he had, on that night, betrayed evidences of bribery; whereas, Mooney's room-mate's affidavit merely shows that Mooney roomed with the affiant elsewhere, during a period beginning just one week after the caucus. (Senate Report 1490, pp. 29 and 30.)

Senator Evarts made the last speech against investigation. He inserted in it a large number of complicated remarks, on a considerable variety of interesting subjects. In this way he occupied nearly half a column of the Congressional Record with his views of the comedy of Pyramus and Thisbe, as represented in the drama of A Midsummer Night's Dream. In this way, also, he spoke at some length of the nature of laws, and maintained that they do not execute themselves. Indeed, there could be collected from his speech a considerable quantity of just remarks. But his statements of the evidence in the Payne case left nearly everything to be desired. He ignored the Mueller–Payne conversation, and Mueller's statement of what he saw in Paige's room. He ignored the Ramey case; the Fierce case; the White case; the Bruner case; the Welsh case and the Boyd case; though he did occupy considerable space in showing the weakness of the case against Mooney and Roche, and considerable other space in commenting upon a couple of hearsay stories which were not important enough to be summarized in this pamphlet. His plan of argument was that of a lawyer who selects for review the weakest points suggested by the testimony taken by his opponent, and leaves the real strength of his adversary's case to be dealt with by the gods.

The twelve republican Senators who followed Senators Logan, Teller and Evarts, in voting with the democrats against any investigation of the Payne case, were Senators Cameron, Chace, Cullom, Ingalls, Jones of Nevada, Miller, Plumb, Riddleberger, Sawyer, Sewell, Stanford, and Van Wyck. Neither of them stated any reason for his vote; and the presumption therefore is that neither of them had any public reason other than such as Senators Logan, Teller and Evarts were pleased to set forth. Those reasons may be imposed on foreigners, but not on the American people. We do not believe that those fifteen Senators voted against investigation for any such cause. They are men of too much intelligence to deceive themselves by any such statements and arguments as those with which the leading three

sought to lull the suspicions of the citizens. The true cause of their conduct is plainly to be sought for elsewhere. The writer of this pamphlet does not know the nature of that true cause in any one of the fifteen cases, but he does know some suggestive facts, and can state some suggestive hypotheses, relevant to nearly the whole of them. Let that therefore be his closing duty.

John A. Logan was last elected to the United States Senate on the 19th day of May, 1885, after a contest of more than three months; he having been nominated by the Republican caucus on the 5th of February. The Illinois Legislature when he was elected, was composed of 103 Republicans and 101 Democrats, and 103 votes were necessary to an election. Eugene A. Sittig, one of the Republican representatives from Chicago, and an ordinary ward politician, refused, throughout the three months following the caucus, to cast any vote for John A. Logan. Without his vote, the election of Gen. Logan could result only from misfortune or mismanagement on the Democratic side of the joint legislative convention. Three months of watching and waiting and maneuvering of the Republican side, under the personal management of Gen. Logan himself, did not achieve the wished for end. There was no prospect that future watching and waiting and maneuvering would be any more effectual. Sittig's vote was therefore plainly indispensable. At the last moment it was obtained. How was it obtained? The writer does not know.

If Gen. Logan yielded at last to strong temptation, and bribed Sittig, to give the one vote without which it was impossible to secure his election to the Senate, that fact will explain his otherwise astonishing conduct in the Payne case. He who is asked to investigate the title of another Senator to-day, may be called upon himself to face charges to-morrow. If he is conscious of his own innocence, he will not shrink from his duty on that account; but if he is conscious of his own guilt, he will surely make friends of the mammon of unrighteousness. Senators whose elections were purchased with money, will undoubtedly

combine to resist investigation, when bribery is charged in any one of their cases.

Henry M. Teller was last elected to the United States Senate on January 21, 1885. The Republican caucus was held on Jan. 18th, and was attended by 48 Republican legislators. Seventeen of these bolted, after Teller's nomination was seen to be imminent, leaving him to be nominated by a majority of the thirty-one members who remained. But thirty-eight votes were necessary to an election, and the seven additional votes could be obtained only from the ranks of the bolters. On the day of the first voting in the Legislature, only four of these were forthcoming. Teller had but thirty-five votes while forty were cast against him. The next day enough more of the votes of the bolters were obtained to secure the election of Senator Teller. How were those votes obtained? The writer does not know. If they were secured by bribery, Senator Teller's conduct in the Payne case was what was to be expected from him.

William M. Evarts was first a candidate for United States Senator in 1861. Nearly a quarter of a century afterward, he was elected in January, 1885, to that high position. No known suspicion attaches to any of the votes by which that result was accomplished. But Mr. Evarts is now an old man. His seventy years of life, and his fifty years of hard intellectual labor, have told upon a constitution not inherently strong. His speeches in the Senate indicate the preservation of his mental peculiarities, rather than the preservation of his mental powers. The Evartian language is there, but the Evartian logic is generally absent. Such a man is peculiarly open to the appeals of friendship, and peculiarly touched by the fellowship of age. Senator Payne is an old man of friendly ways; and when his senatorial title was called in question, nothing was more natural than that Senator Evarts would assume in his behalf, his habitual attitude of an advocate. Mr. Evarts was never a judge, and till lately was never a Senator. Apparently unconscious of a judicial duty, he assumed the old uniform, but was without the

old sword. It was his fate to aim a weak blow in behalf of a wrong cause; and it is our regret to witness the decline of great powers, and to chronicle the mistake of an old age.

Senators Cameron, Jones of Nevada, Sawyer, and Stanford are all men of enormous wealth, amounting in the aggregate to more than fifty millions of dollars; but no one of them possesses either the talents or the learning which the duties of a Senator imperatively require. Except to vote, not one of them takes any important part in the open business of the Senate. Indebted to wealth and to intrigue for their own senatorial elections, it was not to be expected that either of them would favor an investigation of the methods by which intrigue and wealth had secured the election of Senator Payne.

Senators Ingalls and Miller are men of fine abilities, who have a two-fold association. Formal though unproved charges that their own senatorial elections were procured by bribery, have followed both of them from their States to the Capital; and both of them voted against investigating the alleged briberies in the Payne case. These things suggest a painful hypothesis to account for their conduct; an hypothesis doubly painful in the case of Senator Ingalls, whose brilliant intellect as a man, and whose great utility as a Senator, would otherwise abundantly justify the highest political hopes he could cherish.

Senators Riddleberger and Van Wyck may be mentioned together, because, though widely differing at most points, both are men of marked personal eccentricity. They seem at times to be governed by considerations which to others appear quite irrelevant to the matter in hand. To divine what motives influenced them to vote against any investigation of the alleged briberies in the Payne case, is probably a work beyond the powers of any criticism.

Senators Chace, Cullom, Plumb, and Sewell are those who remain for consideration in this pamphlet. Nothing is known by the present writer which would have led him to anticipate from either of them, any opposition to a proper inquiry into

charges of crime. It may be that they were moved against their better judgment by the personal appeals made by Senator Logan: appeals to stand by him in what he considered a critical point in his political career. Or, it may be they were deceived by the bold and astonishing assertion of Senator Teller, that he was "satisfied from an examination of the testimony, that there is no proof of corruption of the members of the Legislature, and that no proof of it can be obtained by the Senate." (Congressional Record of July 23, 1886, p. 7770.) But whether the votes of those four Senators in the Payne case, are to be accounted for on an hypothesis of weakness of will, or an hypothesis of want of information, those votes cannot be justified on any hypothesis whatever.

In shining contrast with this painful record of the fifteen republicans, was the record made in the Payne case by the seventeen who voted for the investigation. The great leaders of the party were all true to patriotism and to honor. Sherman, Edmunds, Hoar, and Hawley, and thirteen other republicans above reproach and above temptation, firmly refused to condone the Ohio briberies. If the fair fabric of federal liberty must hereafter fall, it will fall because undermined with corruption; and the historian of its decline will draw a deep mark between these two records.

It is not to be anticipated that this or any other account of the facts in this celebrated case, or of the resolution of the United States Senate not to investigate those facts, will have any observed tendency to produce a reversal of that resolution. It is too much to expect forty-four Senators to plead guilty to this indictment, by doing hereafter what they refused to do before. But it is not too much to hope, that as fast and as far as the facts are understood, those Senators will be called to a stern account by their States.

ALBERT H. WALKER.

HARTFORD, CONNECTICUT,
September 1, 1886.